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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,043	09/24/2003	Ivano Gagliardi	CM2700L	4999

27752 7590 04/22/2005

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EXAMINER

RAJGURU, UMAKANT K

ART UNIT	PAPER NUMBER
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1711

DATE MAILED: 04/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/670,043

Applicant(s)

GAGLIARDI ET AL.

Examiner

Umakant K. Rajguru

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 1-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

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1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-15, drawn to a composition, classified in class 524, subclass 35.
  - II. Claims 16-18, drawn to a disposable, absorbent article classified in class 428, subclass 139.

The inventions are distinct, each from the other because:

Inventions I and II are related as mutually exclusive species in an intermediate-final product relationship. Distinctness is proven for claims in this relationship if the intermediate product is useful to make other than the final product (MPEP§806.04(b), 3rd paragraph), and the species are patentably distinct (MPEP§806.04(h)). In the instant case, the intermediate product is deemed to be useful as a material for molding and the inventions are deemed patentably distinct since there is nothing on this record to show them to be obvious variants. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions anticipated by the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

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Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

2. During a telephone conversation with Attorney Kevin C. Johnson on March 18, 2005 a provisional election was made with traverse to prosecute the invention of II, claim 16-18. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-15 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carlucci et al (EP 1138293).

Carlucci describes transparent absorbent articles which are disposable. The article comprises a liquid pervious surface, a liquid impervious surface and an

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absorbent structure comprised inbetween. The absorbent structure is provided by an absorbent core paragraph [0015]. Transparency of the article is at least 40% (see claim 8 on page 11). The absorbent core can be a single layer entity or comprise several layers [0028] such as (a) a primary fluid distribution layer, (b) a secondary fluid distribution layer (c) a fluid storage layer, (d) a fibrous layer and (e) other components. Several absorbent materials are used to make fluid storage layer. They include cellulose wadding, modified crosslinked cellulose fibers, absorbent foams, absorbent sponges, polymeric fibers etc [0032]. Hydrogels, superabsorbent or hydrocelloid materials are added to the fluid storage layer [0033].

Claims 16-18 therefore novelty.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

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consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Soerens set (US 6822135), Dutkiewicz et al (US 6562742), Cook et al (US 6465 379) or Beihoffer et al (US 6140550) each one in view of Kimura et al (US 5026800).

Soerens discloses a fluid storage material in which certain particles are secured to one another and/or to a substrate with a crosslinkable binder composition (col. 1, lines 8-11; col. 4, lines 8-32). The particles may be superabsorbent particles having a diameter of between 50 to 800 microns (col. 4, lines 47-59). Disposable articles are prepared using the fluid storage material.

Dutkiewicz disclose an absorbent structure comprising an upper ply and a lower ply. Each ply contains binder/s and superabsorbent particles (col. 18, lines 59 to col. 19, line 40).

Cook also describes an absorbent material having these layers comprising a layer of wetlaid cellulose, a layer of drylaid cellulose and a layer of superabsorber disposed therebetween (col. 2, lines 54-61).

Beihoffer also disclose a water-absorbent article including a flexible fibrous support having particles of a superabsorbent material (col. 2, lines 11-20).

None of the above references mentions the angle –lacking shape of super-absorbent particles, and a transparency value of at least about 50%.

Kimura discloses a water-absorbent resin wherein the shape is angle-lacking (col. 2, lines 67 to col. 3, line 3).

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It would therefore have been obvious to ensure that the superabsorbent particles in Soerens, Dutkiewicz, Cook or Beihoffer possess an angle-lacking shape in order (a) to make easy for handling, (b) to improve absorbency and (c) to enhance absorption rate.

As regards, the (daimed) transparency (of instant claim 17), it is the examiner's position that it is upto one of ordinary skill in the art to make a certain portion of the article transparent or translucent as required by the user of that article.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

8. Claim 17 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 17 is indefinite in reciting "at least about 50%" because it is not known whether it means 49% or 51% or nothing less than 50%.


9. It is to be noted that elected claims 16-18 are indefinite because they depend from claim 1 which is nonelected. However for the purpose of compact prosecution, the examiner has considered these claims as having been amended to encompass the limitation/s of instant claim 1. The applicants are suggested to amend them formally.

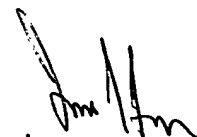
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to U. K. Rajguru whose telephone number is (571) 272-1077. The examiner can normally be reached on Monday-Friday from 9:30 am to 6:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James J Seidleck can be reached on (571) 272-1078. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
U. K. Rajguru/af  
April 6, 2005

  
James J. Seidleck  
Supervisory Patent Examiner  
Technology Center 1700